



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 9, 1995

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR95-254

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30443.

The City of Garland (the "city") received requests for an arrest report and for a probable cause affidavit for an arrest warrant. These requests concern the arrest of a named individual for aggravated assault with a deadly weapon. You indicate that the city has an arrest report responsive to those requests and that the city has already released first page offense report information. You contend, however, that the remaining portions of the arrest report are excepted from disclosure pursuant to section 552.108 of the Government Code.

Section 552.108 excepts from public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

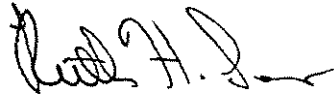
When applying section 552.108, this office distinguishes between cases that are still under active investigation or prosecution and those that are closed. If a case is still under active investigation or prosecution, this section generally excepts from disclosure all information except that found on the first page of an offense report. Open Records

Decision No. 611 (1992) at 3; *see* Open Records Decision No. 127 (1976). Although first page offense information is generally found on the first page of an offense report, its location is not determinative. It must be released regardless of where it is located. To determine what information must be released, the type of information must be examined rather than where it is located. *See* Open Records Decision No. 127 (1976) at 5.

A case may be closed due to a conviction or acquittal, or by administrative decision. Open Records Decision No. 372 (1983) at 4. Information in a closed file may be excepted under section 552.108 only if its release would interfere with law enforcement. Open Records Decision No. 287 (1981) at 1. Such interference must be apparent on the face of the information or reasonably explained by the agency claiming the exception. *Id.* You indicate that the individual who was arrested has been indicted by a grand jury, but that the case has not been closed by a conviction or acquittal. Since this case is still under active prosecution, section 552.108 is applicable to the information at issue other than first page offense report information.<sup>1</sup> We note that since section 552.108 is discretionary with the governmental body claiming the exception, the city may choose to voluntarily release information that is not otherwise confidential.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.<sup>2</sup> This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MAR/rho

Ref.: ID# 30443

Enclosures: Submitted documents

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<sup>1</sup>You did not submit to this office for review a probable cause affidavit for the arrest warrant. However, we note that under article 15.17(a) of the Code of Criminal Procedure, the individual who is arrested must be informed by a magistrate "of the accusation against him and of any affidavit filed therewith."

<sup>2</sup>Since section 552.108 is applicable, we need not address your section 552.103(a) argument.

cc: Mr. Mark White, P.I.  
Rt. 3, Box 25  
Ennis, Texas 75119  
(w/o enclosures)